

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Josh Berger, individually and on behalf
of all others similarly situated,

Plaintiff,

-against-

Michael Foods, Inc.,

Defendant.

Case No. 2:17-cv-06728-RRM-ARL

**NOTICE OF MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss Second Amended Complaint, Defendant Michael Foods, Inc., moves, before the Honorable Roslynn R. Mauskopf, United States District Court Judge for the Eastern District of New York, at the United States Court House, 225 Cadman Plaza, Brooklyn, New York 11201, for an order dismissing the Second Amended Complaint of Plaintiff Josh Berger (Dkt. 44) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, on the grounds that the Second Amended Complaint fails to state a claim upon which relief can be granted, and that the Plaintiffs lack standing.

Dated: November 13, 2019

Respectfully submitted,

/s/ August T. Horvath

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Attorneys for Defendant Michael Foods, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of November 2019, a true and correct copy of the foregoing document has been served on counsel of record who are deemed to have consented to electronic service via the Court's ECF system.

/s/ August T. Horvath
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